

TESTIMONY OF ROBERT W. NAYLOR TO
SENATE AND ASSEMBLY SELECT COMMITTEES
ON IMPROVING STATE GOVERNMENT

October 22, 2009

Thank you for the opportunity to testify.

First, I want to say what an honor it is to appear with Treasurer Lockyer, who is not only one of the smartest people I have met in politics but also has compiled the most distinguished career of public service of any current officeholder in California.

Second, I need to state that the views I am expressing are not necessarily those of my law firm, Nielsen, Merksamer, Parrinello, Mueller and Naylor.

I was a member of the Assembly for eight years from 1978-86 - a period now regarded as "the good old days" - back when Jesse Unruh was happy to befriend the Prop 13 babies and give them political advice. And as a lobbyist and public policy junkie, I have been a close observer of the Legislature for another 23 years.

Without question, the Legislature is facing some serious challenges now that it did not face to the same extent when I served.

But let me add that the quality of the people elected is NOT one of the new problems. If you match the intelligence, work ethic and dedication to public service of today's Legislature against those I served with, I dare say that the overall quality of public servant is higher. I would even say on balance the

overall level of civility in Assembly and Senate floor debates is improved.

But the Legislative process is not working as well as it used to. Committee hearings are not as meaningful. All night sessions are more frequent. And gridlock on major issues, always a problem, seems even worse.

We should be realistic in acknowledging that some new features of the political environment are unlikely to change. We are a more polarized society, polarization fed by the ability to choose what opinions we want to hear in a wide array of internet and broadcast sources.

Legislative districts are more polarized, competitive seats (which tend to elect centrists) far fewer. That is only partly a function of gerrymandering. Prop 11 redistricting will help a little, but people seem to gravitate to geographic areas whose population they agree with.

Plus California as a state has just gotten more and more complex.

But there are some reforms we can pursue which I believe would improve the situation. I will focus on four:

1. Term limits reform.
2. Standing committee reform.
3. Gut and amend reform.
4. Improving oversight

I. Term limit reform.

First a confession. I supported term limits. It turned out to be a terrible idea -- a first class example of the law of unintended consequences.

To be fair, term limits achieved some good things. We got to a far more diverse legislature a lot faster than we would have. We got rid of some legislators (who will go unnamed) who did not carry their weight and served way too long but who because of incumbent advantage went virtually unchallenged.

Further, term limits resulted in many more real contested elections. I looked at the three elections cycles just before term limits (1986, 1988 and 1990) and the most recent three election cycles. Before term limits there were only 7 contested elections in the Senate (3 cycles); afterwards, 31. In the Assembly, there were 24 open races in 3 cycles before term limits; after term limits, 88.

But term limits as currently configured have done far more damage than good, in terms of the effectiveness of the Legislature. They not only cause loss of expertise and institutional memory among legislators; they result in churning of leadership (2 year speakerships), churning of committee chairs (members want to move to chair more prestigious committees as chairs are vacated), loss of expert staff as new members or chairs feel obliged to bring their own staff along; loss of long term thinking about the budget and other major issues; a focus on little bills that are press release opportunities which do not do much (or which have been defeated before, but no one is around who remembers).

Perhaps the most insidious effect is to focus new members on winning their next primary election as they seek to move up or down the ladder. That means giving laser-like attention to the most influential interest groups with the relative minority of voters who turn out for legislative primaries: unions, trial lawyers, Howard Jarvis Taxpayers Association, etc. Straying from their narrow platform can be fatal to a career beyond the immediate term limit. So polarization and political rigidity which would be a problem for other reasons are greatly amplified.

The public will not repeal term limits, but they might allow the "12 years in either house" option, and that would be a very good compromise. It would still allow ample political mobility and open seat elections but would cut in half the harmful effects.

I also urge consideration (after some survey research) of modifying the lifetime ban to allow termed out legislators to start over after sitting out two or even four years. Of the 15 states with term limits, nine have that formulation compared to six with the lifetime ban.

II. Standing committee reform.

In too many instances, standing committee hearings are a waste of time, not deliberations on public policy.

When I served, there was no two minute limit or four minutes a side rule. Senator Lockyer's Judiciary Committee was known to go to the late hours because most witnesses were given thoughtful hearings. Bills of substance were debated, questions asked. And bills did not just get moved along as "works in progress."

Balanced committees also give more opportunity for bi-partisanship. Willie Brown as chair of the Assembly Revenue and Taxation Committee involved the Republicans in Prop. 13 implementation legislation, including floor managing key subject areas. He probably was elected Speaker (by 28 Republicans, 23 Democrats) because of those acts of kindness.

I recommend three reforms to help improve matters:

1. Appoint committee membership that reflects the diversity of philosophy on the floor. That means proportional minority party and moderate Democrat membership. That is how Willie did it and it had several salutary effects:

- Committee hearings were meaningful, not so often rubber stamp votes after perfunctory testimony.
- Bad bills were exposed by debate and could be defeated in committee. It meant fewer half baked bills moving all the way through the process. And fewer floor fights where members are asked to cast a bad vote because the committee casually put a bill out.

2. Try to appoint members who are not serving on committees which meet at the same time. Incredibly, in 8 years in the Assembly, I do not recall one scheduling conflict. I had no other place I had to be but my committee (unless my bill was up in another committee).

3. At least in the second house and preferably the first, discourage members from moving bills through as "works in progress." That disrespects committee members and rewards sloppy legislating. At a minimum, give the committee chairs the power

NOT TO HEAR bills, at least if the legislator has previously introduced some threshold number of bills. This would encourage focusing on the important stuff, the bills ready for prime time.

C. Gut and amend reform

When I served, one huge frustration, particularly at end of session, was a literal blizzard of conference committee reports dropped on our desks - conference reports not in print often radically amending bills, but to be taken up the same evening.

In the late '80s, Joint Rule 30 was adopted requiring conference reports to be in print for 24 hours (two days under Assembly rules). This provided a modicum of transparency and opportunity to analyze. Joint Rule 30 also provided that conference reports cannot be taken up within 3 days of scheduled recess or adjournment.

After Joint Rule 30, conference reports became rare and the gut and amend with concurrence on the same day became the end of session fashion.

As a minimum reform, I recommend a two day in print and one day file notice rule for the gut and amend.

Remember, where there is consensus, joint rules can be waived by a 2/3 vote.

D. Improving oversight.

Oversight of laws already passed or programs already enacted has always been given more lip service than serious time.

But it has gotten worse in recent years.

It is a shame because with the never ending budget crisis, eliminating ineffective programs or intelligently downsizing programs that are not highest priority is important work.

And in an economy struggling to produce jobs, laws or regulations that impose excessive costs on the private sector (compared to the benefits obtained) should be winnowed out.

The churning of committee staff has robbed the Legislature of a lot of the expertise needed for good oversight hearings.

But there is a bundle of expertise in the Legislative Analyst's Office. And in counties and cities and executive agencies where staff turnover is not such a curse.

The first two months of every year (before budget and bill hearings begin in earnest) should be devoted to oversight hearings. Every budget subcommittee and policy committee should have them. The LAO should be asked to propose serious oversight hearing agendas. Committee chairs who do not do this should not get promoted.

Those are my ideas for the time allotted. I would be happy to take questions.